PRESIDENT ROOSEVELT AND "THE TRUSTS"

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IT is safe to say that the most important contribution yet made to the literature of so-called Trusts has been the series of addresses lately delivered by Mr. Roosevelt. The views of the ordinary citizen on the subject, while they may be interesting, are for the most part academic; the settled convictions of the President of the United States stand for a good deal more.

In the opinion of Mr. Roosevelt, the evil, or tendency to evil, in Trusts is so evident that the intervention of the National Government with new authority by means of a sweeping, far-reaching Amendment of the Constitution of the United States, is alone equal to the pressing emergency of their investigation and control.

The phraseology of Mr. Roosevelt is as unique as his plan.

In Cincinnati, where he delivered his last elaborate address upon the subject, it was said:

"The necessary supervision and control, in which I firmly believe as the only method of eliminating the real evils of the trusts, must come through nicely and cautiously framed legislation, which shall aim in the first place to give definite control to some sovereign over the great corporations."

Then, it is stated, will come the knowledge necessary for action, and then the action. And again:

"We need additional power and we need knowledge. Our Constitution was framed when the economic conditions were so different that each State could easily be left to handle the corporations within its limits as it saw fit. Nowadays, all the numerous corporations which I am considering do what is really an Inter-State business, and as the States have proceeded on very different lines in regulating them, they are often organized in a State in which they do little or no business, and do an enormous business in other States contrary to the spirit of whose laws they may be openly antagonistic."

Because there seems to be no prospect of uniform action by the several States towards these corporations it is urged that:

"The States must combine to meet the problem caused by the great combinations of capital, and the easiest way for the States to combine is by action through the National Government."

It is then stated that "a good deal can be done by law"—though there is little or no information as to what it is to be a good deal of—yet a Constitutional Amendment is advocated for procuring, through enforced publicity, the requisite knowledge of the doings of these corporations and for the promulgation of plans for their regulation.

We are thus brought face to face with a plan startling in its possible consequences. Precedents and traditions which have become an accepted part of our political institutions, and under which our commercial activities have been developed until we have come to our existing internal prosperity and to our admitted place in the councils of the world, are to be abandoned in favor of what, we believe, can be shown to be nothing more nor less than an experiment. The National Government is not merely to regulate, but, through the coercion of a Constitutional Amendment and of mandatory statutes, is to have an important voice in the origin and development of commerce; the purposes of corporations are to be the subject of national inquiry. State lines are in large part to be obliterated; Centralization is at last to be enthroned.

A great step this—backward or forward, as the case may be. We may have come to the necessity for it all; the body politic may be so diseased as to require such heroic treatment, but we shall do well to have it first made abundantly clear to us that this condition exists and is not merely guessed at.

Within the limits of a magazine article, it is proposed briefly to consider the views of Mr. Roosevelt with all respect, and yet with the feeling that, when he becomes the advocate of such a departure, not associated with his executive position, he subjects himself to ordinary comment and criticism.

The Constitutional Amendment and subsequent legislation are not described, except that they are to be nicely and cautiously framed. In fact, any knowledge as to what the form of either ought to be is disclaimed, but it is announced that the first aim must be to give definite control to a Sovereign over these corporations. There is, it will be noticed, no hesitation in going to the

logical conclusion to which such views lead; and old phrases, long since discarded, reappear to do good service when centralization in the National Government is aimed at anew.

Again, and with like appropriateness for such a plan, the Constitution is spoken of as having been adopted under conditions where each State could easily be "left to handle the corporations, within its limits, as it sees fit." The idea of a sovereign power in the United States, dominant in Mr. Roosevelt's mind, must be responsible for this expression. The States were not "left" by any one to handle the corporations within their limits. The powers of the General Government are not those which remain after the transfer to the States of their respective powers. On the contrary, the powers of the General Government represent simply the sum total of the concessions from the several States. The States retained what they did not part with. This is not a technical, over-refined distinction. It is fundamental, and on it rests one of the underlying principles of construction of the Constitution. Express language of the Constitution itself has made this abundantly clear.

Among its first Amendments, interpreted by the United States Courts not to contain restrictions on the powers of States, but to operate solely upon the powers of the Federal Government, it is provided that:

> "The powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people."

It is announced, too, that this power was "left in" the States, as this could conveniently, or, to use the precise words, easily be done, since, when the Constitution was framed, "the economic conditions were so different." Though this expression is not quite clear, it is fair to assume that what is meant is that our commercial relations were then either so insignificant as to be negligible, or that they were deemed to be of such a character that it was proper or easy to permit the States to exercise the control over corporations now authorized by law.

These views are not correct. The States have the power because they chose to retain it, and the economic or commercial conditions then in existence were not only given full consideration, but were regarded as of such vast importance that from them, more than from any other source, came the Constitution itself.

So complete was the confusion in those conditions that there were then urgent reasons, wholly lacking now, for surrendering to the National Government the power sought for by Mr. Roosevelt.

The Articles of Confederation failed of their purpose and were productive of good results only while the people were under arms. Even as the War of the Revolution dragged on, the inherent weakness of the Government came to be more and more apparent. With victory and peace came the realization that the hope of the survival of the nation lay in some new and additional power in a common head. "A nation without a national government," Hamilton had termed the United States under the Articles of Confederation. The inability of the Government to impose or collect taxes was serious enough, but the chief defect lay deeper still and is voiced in the call by Virginia for a new compact between the States. New York had taxed the products of New Jersey, and New Jersey those of New York. Virginia taxed the tobacco of North Carolina. There was serious conflict between the States of Maryland and Virginia, in the navigation of the Potomac and Chesapeake Bay; and the States, according to their whims or supposed interest, had laid imposts upon foreign commerce.

This ever-famous resolution of Virginia, looking to a conference of the representatives of all the States, was the recognition of the hopelessness of the existing confusion. It was the foundation of the movement for the establishment of the Constitution, and it made these commercial interests its very corner-stone. It declared that the purpose was:

> "To take into consideration the trade of the United States, to examine the relative situations and trade of the said States; to consider how far an uniform system in their commercial relations may be necessary to their common interest and their permanent harmony."

The Constitutional Convention, afterwards convened, adopted, as the solution of the difficulty, the provision of the Constitution that Congress shall have power "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

Even under the urgent need of a national control over commerce, the provision was adopted without a full realization of what was to be its final construction by the Courts. The views of the framers of the Constitution, and the first decisions of our inferior

courts, all point to a limited construction of this provision, rejected in the great decisions ultimately interpreting it. The States, while intending to reserve to themselves co-ordinate powers with Congress, had vested in Congress a wider and more complete control of commerce than was ever contemplated. The discussion as to the adoption of the exclusive right to regulate commerce with the Indian tribes, proposed to be reproduced from the Articles of Confederation, leaves no doubt on this point; nor is there any question that the provision as it now stands would have been essentially modified if the decision of the higher courts could have been read into it as a context.

But, though it had been supposed that this power of regulation was to be concurrently exercised by the States, the broader construction was adopted, and now in Congress alone resides the exclusive power to regulate commerce. In like manner, the word "commerce," which at the time of the adoption of the Constitution meant primarily transportation, has broadened in meaning, keeping pace with the development of the country, until it includes now communication, and even intercourse, between the States.

Under this Constitutional provision, Congress has passed the Sherman or Anti-Trust Act of 1890, with its sweeping condemnation of all contracts in restraint of Inter-State commerce; and the Supreme Court of the United States has left no doubt either as to its constitutionality or its scope. It has been liberally, not narrowly or strictly, construed. It has been held to reach all contracts in restraint of trade, even though slight and reasonable. The common-law rule making unreasonableness to be the test of the invalidity of trade restraint, was wholly discarded in the framing of this legislation, with consequences to which we shall refer below.

Again, as above quoted, it is said:

> "Nowadays, all the numerous corporations which I am considering do what is an Inter-State business, and as the States have proceeded on very different lines in regulating them, they are often organized in a State in which they do little or no business, and do an enormous business in other States contrary to the spirit of whose laws they may be openly antagonistic."

Supposing this to be so, no one need have any solicitude for the States whose policy or whose laws are opposed to the doings of objectionable corporations created by other States. In so far

as these corporations are not engaged in Inter-State commerce, the right of regulation is in the States. Even where they are engaged in Inter-State commerce, each State may for itself determine how far they shall do business by way of having offices, plants and property within its limits. It can deny to them pretty much everything except the means necessary for soliciting the sale of a product, and its subsequent transportation and delivery. Except when, and to the extent that, they are engaged in the exercise of Inter-State commerce, each State has the right to exclude corporations of other States, from doing business within its borders. It need give no reasons for its action; its power is complete and final. It may act from insufficient causes, yet there is no appeal.

All these questions have long since been set at rest by decisions of the Supreme Court of the United States.

This proposed Constitutional Amendment, wresting from the State the control of its own corporations and the right of exclusion of corporations of other States, would vest in Congress the substantial control of all commercial interests; for the business of this country is to-day in large part transacted by its large corporations. If there were no other objection to the plan, its abrupt transition would be sufficient to condemn it. But the substance, not the form, of the change is its chief objection; for no plan could, it is believed, go further than the proposed Amendment to break down State lines, and to deprive vested interests of the security of State refuge, which may be so vital in the future.

"No political dreamer," says Chief Justice Marshall, "was ever wild enough to think of breaking down the lines which separate the States, and of compounding the people into one common mass." If the time for such political dreaming has come at last, then, when it is too late, there may well be a rude awakening to a more hopeless condition of things than even the chaos out of which the order of the Constitution itself was fashioned.

Not simply conjecture of evil in some of these corporations, but only the demonstration of great evil in all of them, would justify overturning the nicely balanced reciprocal National and State authority, now an accepted part of our institutions, and then only after every other reasonable device had been tried and discarded. Urgent cases make bad law; but at least the emergency is provided for, even though a harmful precedent be established. Here there is not yet the demonstrated emergency to be dealt with, and the

adoption of the proposed plan might work great injury without even the correction of a discovered evil.

Mr. Roosevelt does not attempt to recite any evils against trusts, but leaves this part of the subject with the simple statement that "the evils attendant upon over-capitalization alone are, in my judgment, sufficient to warrant a closer supervision and control than now exists over the great corporations."

Mr. Knox, also, the Attorney-General of the United States, an accomplished lawyer and the chief legal adviser of the President, in a late speech before the Pittsburg Chamber of Commerce, supplementing Mr. Roosevelt's views on the subject, singles out over-capitalization.

Mr. Knox recites various other evils, which it is impossible to consider within the limits of this article. They, however, may be said to group themselves into two classes: those in the one class, we believe, are largely conjectured; for those in the other class existing laws give ample redress, or the mere lapse of time should work a solution.

As to over-capitalization, upon which both Mr. Roosevelt and himself fix as the "very head and front of the offending" of these corporations, Mr. Knox says:

"Over-capitalization is the chief of these, and the source from which the minor ones flow. It is the possibility of over-capitalization that furnishes the temptations and opportunities for most of the others. Over-capitalization is the imposition upon an undertaking of a liability without a corresponding asset to represent it. Therefore, over-capitalization is a fraud upon those who contribute the real capital either originally or by purchase, and the efforts to realize dividends thereon from operations is a fraudulent imposition of a burden upon the public.

"The over-capitalized securities enter into the general budget of the country, are bought and sold, rise and fall, and they fluctuate between wider ranges and are more sensitive in proportion as they are further removed from intrinsic values, and, in short, are liable to be storm-centres of financial disturbances of far-reaching consequence. They also in the same proportion increase the temptation to mismanagement and manipulation by corporate administrators."

In so far as these alleged evils of over-capitalization have to do with the investor and not the consumer and the general public, we make no comment except that, if the investor is by misrepresentation misled to his prejudice, existing laws will protect him. In other cases, Wall Street can be depended on to take care of itself in such matters; it does not need to have its sagacity sup-

plemented by an Amendment of the Constitution of the United States. A centralized government is bad enough; but a paternal government demanding the aid of a Constitutional Amendment to protect speculators in inflated share capital, would be a rather dangerous and revolutionary substitute for the good old-fashioned doctrine of *caveat emptor*.

That over-capitalization is an evil every one must admit, but that it increases "the temptation to mismanagement and manipulation by corporate administrators," or that the effort to realize dividends upon over-capitalized shares is the source of great evils, we very much doubt. We believe that as a rule the history of corporate mismanagement would not bear out Mr. Knox, and we are dealing with the rule, and not with exceptions, for the remedy proposed is to be general, not specific. Corporate mismanagement is traceable to a good many sources, but the evil of over-capitalization is not one of its sources, but rather one of its manifestations; and, though we do not mean to suggest that we should dispense with the aid of statutes to prohibit over-capitalization,—quite the contrary—yet a Constitutional Amendment of the Constitution of the United States ought not to be sought as an agency to that end. Time or organization may be relied upon to correct much of this abuse of over-capitalization in industrial enterprises as has been the case with railroad corporations.

Over-capitalization in most cases contains within itself the seeds of its own destruction. Investors and financial institutions after a few bitter experiences are quick to let alone over-capitalized ventures, and the absence of a purchasing public and a diminished credit can be relied upon to cure a great deal of the evil of over-capitalization by making it unprofitable.

We do not believe that the desire for large earnings is measured by the size of the capital stock of a corporation. Nor do we believe the view to be correct as a rule—and we again emphasize the remark that we must deal with the rule and not with the exception—that the over-capitalizations of industrial corporations become the "storm-centres of financial disturbances." Certainly the last three financial disturbances of the country have not been attributed to this cause, nor do we recall any such instance. Financial disturbances arise from a variety of causes: from over-confidence followed by lack of confidence; from excessive speculation in good, bad and indifferent securities, in

products, in real estate; and from the neglect on the part of the public of ordinary principles of business prudence.

But there is frequently an underlying cause of this trouble. Periodical financial disturbances, according to the general testimony of experienced financial men of this country, entirely familiar with the subject of which they speak, are largely brought about because Congress continues to decline to adopt reasonable and urgently demanded changes in existing provisions as to our currency and our National Bank reserves. And if some part of the time that is spent in trying to catalogue the suspected evils of trusts were given to devising a sane financial policy for our Government, and to inculcating among the people the true principles of business prudence, we should be freer from financial disturbances; and what financial disturbances there might be would not be likely to rise to the dignity of having storm centres.

It is an error to suppose that these corporations can profit only by secret methods and that they are invariably opposed to a reasonable publicity as to their operations and conditions. The fact is that there are several conspicuous examples to the contrary. The United States Steel Corporation, since its organization, has without the coercion of law or statute treated its shareholders and the commercial world with all reasonable confidence. In this case, having the knowledge, is there the disclosed evil? And, if so, is any one prepared to suggest the remedy to be applied? Would it not be fair to assume that other corporations will of their own accord follow this example, or that either public opinion or the public Exchanges will exact of them similar frankness if it continue to be withheld?

It is to be borne in mind, too, that the great problem inherent in these vast aggregations of capital and intelligence—and intelligence constitutes much of the capital—is not yet understood; that much which seemed permanent has been found to be temporary; much of apparent import has become insignificant. Few of these corporations have succeeded in a way to justify the expectations of their promoters or the fears of their critics, and many a one has fallen of its own weight, not because it was too evil, but simply too big. Often has reorganization followed quickly on the heels of organization, and the attempt at an undue control of an industry, through the limitation of the output of a product or the fixing of its price, has not merely invited, but

really spawned, rival enterprises. "*In se magna ruunt,*" is the fitting epitaph for many a so-called trust.

To await a time when developments will have suggested beyond much doubt the best plan to be adopted in dealing comprehensively with the question, meanwhile calling all offending corporations to account for their misconduct, would seem to be the part of wisdom.

To apply a remedy before the real trouble is understood is to act unscientifically, nor is one a good physician to the body politic who does not appreciate that a disease, if it exist, must be eradicated by a treatment of its source, and not its symptoms, and that, as the French cynic declares, there are diseases which all remedies aggravate.

Still, Mr. Roosevelt, having undertaken to deal with this question, may have assumed responsibility for some prompt action, and, if the plan suggested by him be abandoned as impracticable, it is believed that another and a better course is possible. The suggestion is made, not because it is believed that the time is yet ripe for the most intelligent action, but because, as an experiment, it is thought preferable to the plan proposed.

Since the decision of the Supreme Court of the United States as to the constitutionality of the Act of Congress incorporating the Bank of the United States, it is accepted law that Congress can, in aid of governmental functions, create a corporation for the purpose of engaging in foreign or Inter-State commerce. Chief-Justice Marshall, in the United States Bank case, rested this power of Congress upon the authority of the Constitution, which, after enumerating specific powers, among them the power to regulate commerce between the States and with foreign countries, empowers Congress "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers."

Later expressions of the United States Supreme Court have not departed from this view; they have enlarged it.

Congress being authorized, therefore, to create corporations in aid of Inter-State commerce, it is believed that it can likewise pass a general Act under which corporations engaged in Inter-State commerce may be incorporated. The subject cannot be said to be free from doubt, but after a careful review of the decisions of the Supreme Court of the United States it is our judg-

ment that such an Act, if confined in its purposes to Inter-State commerce and its reasonably necessary incidents, could be so drawn as to be constitutional. And by these incidents we mean to be understood to go so far as to include the conduct or control by such corporations of the buying and selling and manufacture legitimately connected with their corporate objects.

Such an Act would require that corporations availing of its privileges should from time to time make public certain information deemed for the public good. Incorporation under such Act would, of course, be permissory, not compulsory; but, in consideration of the manifest advantages of incorporation under a National Act, it is probable that new corporations would avail themselves of the privileges offered, even though with the benefits of the Act there were associated this requirement of publicity, and, perhaps, other requirements. Existing corporations, even, might reincorporate under the Act.

Such an Act, to accomplish its purpose, must be fair and liberal, drawn upon the lines of the most enlightened thought concerning corporations. While it is not necessary that it should go as far in conferring powers as the Companies Acts of England, still it should meet the requirements of modern corporate business.

The State of New York, after a good deal of bitter experience with respect to its corporation act, offers an excellent illustration of the spirit in which Congress must legislate.

For many years, there had been upon the statute books of New York State the so-called Manufacturing and Mining Act. By successive amendments it was, in 1890, abreast of the most liberal acts of other States. In 1875, there had been passed another act called the Business Corporation Act. The latter was rarely, if ever, availed of. It was drawn by a lawyer not engaged in general practice; it was narrow, imperfect, unworkable in its provisions.

In 1890, a revision of the New York Statutes affecting corporations was determined upon, and to that end a commission was appointed. Unfortunately, the leading spirit on the commission was a lawyer with little professional experience. He determined, according to his own language, to pattern the new bill after what he called the "latest expression of the legislative will," the Act of 1875; the Manufacturing and Mining Act was repealed and a most objectionable law resulted. Not until two

years afterward, when a Committee of the New York Bar Association was appointed, was any progress made toward refashioning the Act.

To this Committee, of which the writer was a member, many amendments were conceded by the commission and adopted by the Legislature. Other changes were enacted in succeeding years until New York is beginning again to get a fair share of new corporations, and should get its full share if the tax feature of the act were appropriately modified.

But in the interval New Jersey had profited by the mistakes of New York, and the exodus of corporations from New York State to New Jersey began, and has continued ever since.

To bring about substantial results, the Act proposed must be drawn with a deliberate intent to adapt corporate forms to the transaction of commercial business, and with a full knowledge of the requirements of commerce as well as the technical structure of a corporation. Such an act should not be drawn without consultation with practising lawyers, who know the needs of their clients, and who can at least be as much depended upon as the average legislator to give due heed to the public welfare.

Perhaps the appointment by Congress of a Commission for the framing of such legislation might not be inappropriate. On such a Commission, in addition to members of Congress, might be representatives from Chambers of Commerce, practising lawyers, eminent judges. It is not impossible that among the representatives of organized labor might be found those able to render valuable public service on such a Commission.

Where a corporation organized under such an Act of Congress is engaged in Inter-State commerce, the States would be powerless to make any injurious regulation concerning it, and the right of a State to prohibit such corporations from doing business within its borders could be distinctly limited.

While it is true that many of the States have made provision by statute whereby corporations of other States, on compliance with prescribed terms, are entitled to carry on business within their borders, yet there are objectionable limitations and conditions in some of those statutes, construed at times by even ministerial officers. Not a little embarrassment has thus resulted, and the conduct of business and the ownership of property by these large corporations are not always under favorable conditions.

Not only could such restrictive statutes, in large part, be made nugatory, but it is reasonable to suppose that the broadest comity of the States would be expressed toward corporations organized under a National Act.

The United States courts could be given jurisdiction of all actions by and against such corporations, and, as occasions arose, their reorganization could more easily be effected, for only United States courts are fitted by wide experience and effectiveness of their decrees to deal with such an emergency.

Uniform taxation could be provided for.

There could be uniformity, too, of liability of Directors, capable of being enforced by prompt and well-defined procedure in the Courts of the United States. Along with all reasonable publicity, other reasonable requirements also could be provided for.

The securities of such corporations might well furnish a more attractive investment to the public than the securities of State corporations, and the more general such an investment should become, the closer would be the relations of producer and consumer, and the less the likelihood of hostility between them.

Though by no means all, these are among the results to be looked for from a judicious Act of Congress. Assuming that such an Act can be so drawn as to be constitutional, and that it will be availed of by men having in hand large commercial enterprises—and both these assumptions are quite as reasonable as that a Constitutional Amendment of the kind proposed, even if it could be brought about, would have the desired effect—then we shall secure publicity, which seems to be the chief object of the Constitutional Amendment. And we should secure a good deal besides.

The whole theory of our nicely balanced control of State and Inter-State commerce ought, with the exercise of only reasonable comity by the States, to be worked out in practice under such an Act, not after long years, by sweeping changes or at best by doubtful expedients, but promptly, by reason of and not in spite of the Constitution. Lastly the result will come without coercion.

We are not without experience as to the choice of methods in such matters.

In the recent anthracite-coal strike the right of coercion against the coal operators was doubtful, although it was claimed they represented a so-called Trust. At best, coercion meant delay, the suffering of rich and poor, and no end of conflict between labor

and capital. Mr. Roosevelt brought about a peaceable and prompt adjustment of a momentous situation and received the acclamations of a grateful people. He was in truth a *Deus ex machina.* He can gain like credit now in the case of Trusts by a solution less dramatic, though it may be at least equally efficacious. In fact, there are many men standing for the best citizenship who, while hoping that the action taken in this great emergency will not be productive of evil consequences, hope, too, that it should not establish any precedent; who believed that any intervention was inadvisable when the reign of law was challenged by public disorder and by bloodshed, and that a winter's comfort might be dearly bought at the price of a compromise with labor defiant, mutinous and under arms.

In the light of this experience it would be rather anomalous if these corporations, because some of them are accused at the most of avoiding or, if one will have it so, of evading State and National statutes, are not to be accorded judicious and temperate consideration.

Of course, the experiment suggested is a simple one, but such experiments ought to be simple. Important changes in our organic law which dates from the foundation of the Republic should come by growth, and not by abrupt creation.

Compared with the plan of a Constitutional Amendment, it is a coastwise passage—perhaps a millpond sail—as against the crossing of an ocean. But voyages on the great deep require much preparation and wide experience. The prerequisite knowledge to deal intelligently with this question is nearly all lacking, according to Mr. Roosevelt's own admission. If so, let the modest effort be made; the more hazardous voyage may never be necessary.

We have had, not long since, a striking example of the need of great deliberation in dealing with the question of any new regulation of these corporations.

We understand vaguely what is colloquially meant by "community of interest" in railroad circles, and we know that, from the North to the Gulf, from the Atlantic seaboard to the Lakes and to the Pacific Coast, lines of railroad, through merger or substantial union, are linked together into great railroad systems.

The existing condition, in more than one significant instance, is directly traceable to the Sherman Anti-Trust Act.

If the decision in the United States courts in the Trans-Mis-

souri and Passenger Traffic cases had been that only unreasonable contracts in restraint of trade were in violation of the Act, and that all contracts between transportation companies could have been the subject of judicial enquiry, does anyone for a moment think that these corporations would have fled as a refuge against unwise legislation to authorized mergers? But the Act was crudely drawn, imperfectly considered, hastily enacted; the rule of the Common Law that only unreasonable contracts in restraint of trade are void was disregarded, and the Supreme Court, finding no authority for upholding agreements in even slight or reasonable restraint of trade, condemned them all.

The transportation problem of this country has thus suddenly come to gigantic proportions; and, without wishing to be understood as predicting evil consequences from these conditions, it must be borne in mind that great common-carriers, with their accompanying franchises, are to be regarded quite otherwise than are mere trading or manufacturing corporations, however great. Moreover, and this partakes almost of the ludicrous, while the whole history of the Act indicates clearly that it was intended to apply merely to so-called Trusts, and not to transportation companies, it has been held to apply to contracts in restraint of trade, however reasonable, between transportation companies, and not to reach the operations of a so-called Trust, even though seeking to monopolize the output of a special product.

The Attorney-General of the United States, Mr. Knox, is not slothful in the pursuit of these great corporations; yet he is pleading for what is the opposite of the effect of the decisions under the Sherman Act. In his Pittsburgh speech he said:

"A law regulating Inter-State commerce for its protection against restraint, so broad as to cover all persons whose business is conducted under agreements which are in any way or to any extent in restraint of trade, might exclude thousands of small concerns conducting industries in the State from marketing their products in others; but a law which only covers contracts and combinations in restraint of trade, as defined by the common law, would exclude all hurtful combinations and conspiracies. Congress can, if it sees fit, adopt the scheme of that law.

"In the enforcement of such law, each case as it arose would be considered upon its own facts, and the rule of guidance would be as laid down by the Supreme Court of the United States—that is, 'public welfare is first considered, and if it be not involved and the restraint upon one party is not greater than protection to the other party requires, the contract may be sustained. The question is whether, under the particu-

lar circumstances of the case, and the nature of the particular contract involved in it, the contract is or is not reasonable.' "

No one could make wiser suggestions on the subject, and it would seem clear that, without any great display of repentance, the Republican Party, in so far as Mr. Knox represents it, is prepared to lead a new statutory life.

Yet, considering some of the results brought about by this crude legislation, the plea of Mr. Knox is, to use a homely illustration, somewhat like "locking the barn door after the horse has been stolen."

Whatever else may be said of his view, it is virtually a concession that the Sherman Act was drawn upon a wrong principle. Clearly, if there is to be further action in the matter, it should be with the caution born of previous error.

Hasty action toward large corporations has proceeded on the theory that capital employed in industry is seeking temporary advantage by evading the mandate of some rule of right conduct, whereas the whole history of such investment shows that in the main the effort has been to build great and permanent enterprises within the shelter of reasonable laws. It has proceeded on the theory that all large corporations were guilty of the offenses laid at the door of only a few, without recognition of the fact that by such confusion of thought all industry might be injuriously affected. To use the most felicitous illustration of Mr. Secretary Root, these offending corporations are mere weeds in the garden of prosperity and are to be gotten rid of only by patience and discrimination, and not by a destruction of the garden itself.

These corporations ought not to be free from governmental regulations, but the regulations must, to be framed intelligently and wisely, be framed deliberately. Any other course is of no effect, or of evil effect. If there are to be new regulations, then they must be reasonable in the light of past experience; they must be framed to correct abuses where they appear, not where they are conjectured; they must be directed against evildoers, not against all organized industry; they must not arraign all corporations under indictments without counts, and lastly and above all, they must be founded not on the dictates of political policy, but on the accepted principles of political economy.

These corporations may reach out for great gain; but philanthropy is not a corporate object, and it is altogether fanciful to

seek the adoption of any Utopian plan, whereby business men for business acts are to be tried in a Court of Conscience. Evil conduct in corporations or individuals may properly enough be legislated against, but keen rivalry and the legitimate effort to secure large return on invested capital are not to be confused with evil conduct.

A former Lord Chief Justice of England, knowing men and the world as he knew law, once said when deciding a question growing out of the selfish rivalry of a great corporation whose practices were not altogether to be commended:

> "It must be remembered that all trade is and must be in a sense selfish; trade not being infinite, nay, the trade of a particular place or district being possibly very limited, what one man gains another loses. In the hand-to-hand war of commerce, as in the conflicts of public life, whether at the bar, in Parliament, in medicine, in engineering (I give examples only), men fight on without much thought of others, except a desire to excel or to defeat them. Very lofty minds, like Sir Philip Sidney, with his cup of water, will not stoop to take an advantage, if they think another wants it more. Our age, in spite of high authority to the contrary, is not without its Sir Philip Sidneys; but these are counsels of perfection which it would be silly indeed to make the measure of the rough business of the world as pursued by ordinary men of business."

Special care is desirable just now in legislating concerning these great corporations, grouped under the name of Trusts, for they stand not only as exponents of our prosperity at home and abroad, but as its sponsors as well. They are not only national but international enterprises. The scarecrow "Made in Germany" has been replaced by a real man in the field wherever these corporations are supplanting or diminishing the trade of other nations, and to-day we have a great place in the councils of the world, not so much because of our new possessions or of our new navy, but because we have pushed our commercial interests to the very ends of the earth. The agency has been the much-denounced Trust.

It is of the first importance that the efficiency of the agent be not unwisely and unnecessarily impaired, not because we should desire to be richer and more influential than all other lands, but because—while not unmindful of the far-reaching results which flow from the high ideals of the individual and of a people—we must recognize it to be true that the power of a nation for great good in the world and for establishing the peace and the happiness

of its subjects, must rest finally for a foundation upon national prosperity.

And now it remains to add only one suggestion.

The problems which the vast accumulations of wealth and power of these great corporations bring in their train are yet unsolved. Great and enduring renown will be the award of him who does solve them, for he will have gone far in solving the problem of labor and capital. The President of the United States from his high position and with the esteem of a whole people is earnestly trying to solve them, and in this work he is entitled to the co-operation of his fellow citizens. To that end, in the hope of suggesting one reasonable way of going about the work, this article has been written. It is hoped, however, that the spirit of the suggestion, rather than its letter, will commend it.

Reasonableness is the prerequisite of any plan looking toward a closer relation between the interests of capital and labor of this land, of the producer and consumer, of the rich and the poor. It will not come, in our day or ever, through the coercion of Constitutional Amendments which undermine cherished traditions of State and National authority, or of mandatory statutes enacted in a spirit of hostility towards capital invested in industry. It will not come through coercion at all.

For this closer relation we must look elsewhere, to the development between the two interests of a wider charity, which shall derive its sustenance and its inspiration from humanizing influences, from high purposes and from all else that is making for the enlightened progress of the world.

To be given the opportunity which Mr. Roosevelt now has to contribute towards such a result, is nothing less than a splendid privilege.

JOSEPH S. AUERBACH.